

Case No. F3330(C)

REMARKS

Reconsideration of the application is respectfully requested in view of the following remarks.

The present specification sets out the background of this invention. When using cartridges for extrusion of a frozen aerated confection, it is important that the frozen aerated confection be soft enough so that extrusion can be effected without exertion of excessive pressure on the cartridge. The specification indicates that to ensure that the frozen aerated confection was soft enough it has, in the past, been necessary to dispense the frozen aerated confection at a temperature which is no lower than about -12°C. However, this has caused difficulties where freezing cabinets are maintained at around -18°C or less. Such circumstances present less desirable choices such as storing the cartridges in a separate freezer compartment having a higher temperature or providing time for the cartridge to warm up before the frozen aerated confection can be extruded.

The present invention is directed to the discovery that it is possible to prepare frozen aerated confections which are sufficiently soft that they can be extruded from a cartridge at -18°C by careful selection of the sugars and yet still minimize amounts of glycerol and avoid high overrun.

The present invention is directed in claim 1 to a frozen product comprising a cartridge which contains a frozen aerated confection having an overrun of above 20% and below 100%. The frozen confection includes no more than 1.5% by weight glycerol, freezing point depressants in an amount above 25 weight % and under 37 weight % and

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between 0 and 15 wt. % fat. The freezing point depressants have a number average molecular weight of less than 275.

The Office appears to have withdrawn the Section 102 rejection, but retained the Section 103 rejection.

Cole, U.S. Patent No. 4,452,824 is directed to a soft frozen dessert product which is readily extruded upon removal from a home freezer. Cole et al. indicate that their products can be thawed for long periods between -10°F and +10°F without significant growth of ice crystals. The Cole et al. formulas are said to contain a critical combination of mono di- and polysaccharides to achieve a desirable level of freezer softness and storage stability.

The Office points to no teaching of Cole et al. that the problem of extrusion of frozen confections from cartridges of higher temperatures could be solved by use of the freezing point depressants in the range recited herein. As set forth in the Wix declaration, the Cole et al. runs pointed to by the Office use formulations having number average molecular weights which are considerably higher than the range recited in claim 1. Moreover, the ratio taught by Cole et al. encompass a variety of molecular weights. Given that and the fact that the runs pointed to by the Office are shown by Wix to have had molecular weights of approximately 300 or more, it is unclear how one of ordinary skill would be led by the Cole et al. reference to believe that the problems of extrusion of ice cream at higher temperatures could be solved by selection of product with recited molecular weights. Moreover, it is not apparent that Cole '154 remedies the deficiencies of Cole '128 with respect to claim 1.

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In view of the foregoing, it is respectfully requested that the application be allowed.

Respectfully submitted,



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